STATE OF NEW YORK

6350

2017-2018 Regular Sessions

IN SENATE

May 11, 2017

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the alcoholic beverage control law, in relation to enacting the wine industry and liquor store revitalization act; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "wine industry and liquor store revitalization act".

§ 2. Subdivisions 4 and 5 of section 63 of the alcoholic beverage control law, subdivision 4 as amended by chapter 297 of the laws of 2016, are amended and five new subdivisions 7, 8, 9, 10 and 11 are added to read as follows:

4. **(a)** No licensee under this section shall be engaged in any other business on the licensed premises. The **sale of products complementary to the business of the licensed premises shall not constitute engaging in another business within the meaning of this subdivision. Such products shall include but not be limited to the** sale of lottery tickets, when duly authorized and lawfully conducted, the sale of corkscrews or the sale of ice or the sale of publications, including prerecorded video and/or audio cassette tapes, designed to help educate consumers in their knowledge and appreciation of wine and wine products, as defined in section three of this chapter, or the sale of [~~non-carbonated, non-flavored mineral waters, spring waters and drinking waters~~] **non-alcoholic beverages for consumption on or off premises, including but not limited to bottled water, juice and soda beverages, or the sale of tobacco products or herbal cigarettes, provided the licensee complies with section thirteen hundred ninety-nine-cc of the public health law, or the sale at retail of cigars which have been prepackage by the manufacturer in boxes of ten or more, or the sale of publications designed to help educate consumers in their knowledge and appreciation of cigar products, or food items, which shall include locally produced farm products and any food or food product not specifically prepared for immediate**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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consumption upon the premises, or the sale of gift bags and gift baskets including, but not limited to, shot glasses, single malt scotch glasses, grappa glasses, decanters, other glassware, food or farm products not specifically prepared for immediate consumption upon the premises, all of which is related to the consumption and enjoyment of wine and spirits or the sale of glasses designed for the consumption of wine, racks designed for the storage of wine, and devices designed to minimize oxidation in bottles of wine which have been uncorked, or the sale of gift bags, gift boxes, or wrapping, for alcoholic beverages purchased at the licensed premises shall not constitute engaging in another business within the meaning of this subdivision.

(b) The installation and operation of automated teller machines shall not constitute engaging in another business within the meaning of this subdivision. For purposes of this subdivision, "automated teller machine" means a device which is linked to the accounts and records of a banking institution and which enables consumers to carry out banking transactions, including, but not limited to, account transfers, deposits, cash withdrawals, balance inquiries, and loan payments.

5. [~~Not more than one license shall be~~] Nothing in this section shall be construed to prohibit multiple licenses from being granted to any person under this section.

7. Any license obtained under this section includes authorization to sell alcoholic beverages for resale to licensed premises for on-premises consumption as licensed by sections fifty-five, sixty-four, sixty-four-a, seventy-nine-b, and eighty-one of this chapter as provided in subdivisions three-a and three-b of section one hundred two of this chapter.

8. Commencing on the effective date of this subdivision, no additional licenses shall be issued pursuant to this section except as outlined in subdivision nine of this section. The provisions of this subdivision shall not apply to (a) the renewal, transfer or continuance of a license pursuant to this chapter, (b) an application for a license filed before the effective date of this subdivision, (c) the issuance of a license in accordance with the provisions of this chapter, to a person who purchased the business operations of a licensee, provided, however, that any person licensed under this section shall make an application to the liquor authority prior to selling its license to another person.

9. Any existing license issued under this section which is canceled or revoked by the liquor authority may be auctioned off to the highest bidder, provided that the person meets all the applicable requirements. The amount of the sale of the existing license as authorized in this subdivision shall be subject to sales and compensating use tax as imposed by section eleven hundred five of the tax law.

10. Each existing licensee shall be authorized to apply for one additional license for retail sale of liquor for consumption off the premises for use in the establishment of another licensed premises, provided however, the additional premises complies with all applicable restrictions and requirements. The additional license issued by the authority under this subdivision may be sold provided the purchaser meets all applicable requirements, which sale shall be subject to sales and compensating use tax as imposed by section eleven hundred five of the tax law. The authorization for the establishment of a new premises or sale of the additional license under this subdivision shall expire three years from the effective date of this subdivision.

11. The authority is authorized to auction off to the highest bidder, provided that the person meets all the applicable requirements, addi-

tional licenses for the sale of liquor or wine or both at retail for consumption off the premises. The revenue from this sale shall be allocated for the increased licensure and enforcement efforts of the authority. The authority shall be authorized to sell no more than fifteen additional licenses every two years, beginning on April first, two thousand nineteen.

§ 3. Subdivision 4 of section 63 of the alcoholic beverage control law, as amended by chapter 603 of the laws of 1992, is amended to read as follows:

4. (a) No licensee under this section shall be engaged in any other business on the licensed premises. The sale of products complementary to the business of the licensed premises shall not constitute engaging in another business within the meaning of this subdivision. Such products shall include but not be limited to the sale of lottery tickets, when duly authorized and lawfully conducted, the sale of corkscrews or the sale of ice or the sale of publications, including prerecorded video and/or audio cassette tapes, designed to help educate consumers in their knowledge and appreciation of wine and wine products, as defined in section three of this chapter, or the sale of [~~non-carbonated, non-flavored mineral waters, spring waters and drinking waters~~] non-alcoholic beverages for consumption on or off premises, including but not limited to bottled water, juice and soda beverages, or the sale of tobacco products or herbal cigarettes, provided the licensee complies with section thirteen hundred ninety-nine-cc of the public health law, or the sale at retail of cigars which have been prepackaged by the manufacturer in boxes of ten or more, or the sale of publications designed to help educate consumers in their knowledge and appreciation of cigar products, or food items, which shall include locally produced farm products and any food or food product not specifically prepared for immediate consumption upon the premises, or the sale of gift bags and gift baskets including, but not limited to, shot glasses, single malt scotch glasses, grappa glasses, decanters, other glassware, food or farm products not specifically prepared for immediate consumption upon the premises, all of which is related to the consumption and enjoyment of wine and spirits or the sale of glasses designed for the consumption of wine, racks designed for the storage of wine, and devices designed to minimize oxidation in bottles of wine which have been uncorked[~~, shall not constitute engaging in another business within the meaning of this subdivision~~].

(b) The installation and operation of automated teller machines shall not constitute engaging in another business within the meaning of this subdivision. For purposes of this subdivision, "automated teller machine" means a device which is linked to the accounts and records of a banking institution and which enables consumers to carry out banking transactions, including, but not limited to, account transfers, deposits, cash withdrawals, balance inquiries, and loan payments.

§ 4. Section 79 of the alcoholic beverage control law is amended by adding four new subdivisions 5, 6, 7 and 8 to read as follows:

5. Any license obtained under this section includes authorization to sell alcoholic beverages for resale to licensed premises for on-premises consumption as licensed by sections fifty-five, sixty-four, sixty-four-a, seventy-nine-b, and eighty-one of this chapter as provided in subdivisions three-a and three-b of section one hundred two of this chapter.

6. Commencing on the effective date of this subdivision, no additional licenses shall be issued pursuant to this section except as outlined in

subdivision seven of this section. The provisions of this subdivision shall not apply to (a) the renewal, transfer or continuance of a license pursuant to this chapter, (b) an application for a license filed before the effective date of this subdivision, (c) the issuance of a license in accordance with the provisions of this chapter, to a person who purchased the business operations of a licensee, provided, however, that any person licensed under this section shall make an application to the liquor authority prior to selling its license to another person.

7. Any existing license issued under this section which is canceled or revoked by the liquor authority may be auctioned off to the highest bidder, provided that the person meets all the applicable requirements. The amount of the sale of the existing license as authorized in this subdivision shall be subject to sales and compensating use tax as imposed by section eleven hundred five of the tax law.

8. Each existing licensee shall be authorized to apply for one additional license for retail sale of liquor for consumption off the premises for use in the establishment of another licensed premises, provided however, the additional premises complies with all applicable restrictions and requirements. The additional license issued by the authority under this subdivision as well as any existing license issued under this section may be sold provided the purchaser meets all applicable requirements, which sale shall be subject to sales and compensating use tax as imposed by section eleven hundred five of the tax law. The authorization for the establishment of a new premises or sale of the additional license under this subdivision shall expire three years from the effective date of this subdivision.

§ 5. Section 83 of the alcoholic beverage control law is amended by adding a new subdivision 10 to read as follows:

10. The annual fee for a grocery or drug store wine license pursuant to section seventy-nine-e of this article shall be one hundred ten dollars. Where, however, the applicant is the holder of two or more such licenses, the annual fee for each additional license shall be double the amount hereinabove set forth.

§ 6. Subdivision 2-a of section 100 of the alcoholic beverage control law, as amended by chapter 249 of the laws of 2002, is amended to read as follows:

2-a. No retailer shall employ, or permit to be employed, or shall suffer to work, on any premises licensed for retail sale hereunder, any person under the age of eighteen years, as a hostess, waitress, waiter, or in any other capacity where the duties of such person require or permit such person to sell, dispense or handle alcoholic beverages; except that: (1) any person under the age of eighteen years and employed by any person holding a grocery or drug store beer license shall be permitted to handle and deliver beer and wine products for such licensee, (2) any person under the age of eighteen employed as a cashier by a person holding a grocery or drug store beer license shall be permitted to record and receive payment for beer and wine product sales when in the presence of and under the direct supervision of a person eighteen years of age or over, (2-a) any person under the age of eighteen years and employed by a person holding a grocery store or drug store beer license as either a cashier or in any other position to which handling of containers which may have held alcoholic beverages is necessary, shall be permitted to handle the containers if such have been presented for redemption in accordance with the provisions of title ten of article twenty-seven of the environmental conservation law, [~~and~~] (3) any person under the age of eighteen years employed as a dishwasher, busboy, or

other such position as to which handling of containers which may have held alcoholic beverages is necessary shall be permitted to do so under the direct supervision of a person of legal age to purchase alcoholic beverages in the state, (4) any person under the age of eighteen years and employed by any person holding a grocery or drug store wine license shall be permitted to handle and deliver wine for such licensee, and (5) any person under the age of eighteen employed as a cashier by a person holding a grocery or drug store wine license shall be permitted to record and receive payment for wine when in the presence of and under the direct supervision of a person eighteen years of age or over.

§ 7. Section 100 of the alcoholic beverage control law is amended by adding a new subdivision 2-c to read as follows:

2-c. No person shall sell, deliver or give away or cause or permit or procure to be sold, delivered or given away any alcoholic beverages to any person, actually or apparently, under the age of twenty-one years. As a precondition to the sale of any alcoholic beverage, the purchaser of any alcoholic beverage must provide written evidence of age. No licensee, or agent or employee of a licensee under this chapter, shall accept as written evidence of age by any such person for the purchase of any alcoholic beverage, any documentation other than: (a) a valid driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or (b) a valid passport issued by the United States government or any other country, or (c) an identification card issued by the armed forces of the United States.

§ 8. Paragraph (a) of subdivision 14 of section 105 of the alcoholic beverage control law, as amended by section 1 of part U of chapter 63 of the laws of 2003, is amended to read as follows:

(a) No premises licensed to sell liquor and/or wine for off-premises consumption shall be permitted to remain open:

(i) On Sunday before [~~twelve o'clock post meridian~~] eight o'clock antemeridian and after nine o'clock post meridian.

(ii) On any day between [~~midnight and~~] three o'clock antemeridian and eight o'clock antemeridian.

[~~(iii) On the twenty-fifth day of December, known as Christmas day.~~]

In any community where daylight saving time is in effect, such time shall be deemed the standard time for the purpose of this subdivision.

§ 9. Section 105 of the alcoholic beverage control law is amended by adding a new subdivision 24 to read as follows:

24. Cooperative agreements by licensees to sell at retail for consumption on the premises. Any two or more retail licensees for off-premises consumption may join in a cooperative agreement to make joint purchases of alcoholic beverages in larger quantities than might otherwise be purchased; provided, however, that all alcoholic beverages purchased pursuant to any such agreement shall be distributed to none other than a licensee who is a party to such agreement.

§ 10. Subdivisions 3-a and 3-b of section 102 of the alcoholic beverage control law, as amended by chapter 458 of the laws of 1993, are amended to read as follows:

3-a. No licensee or permittee shall purchase or agree to purchase any alcoholic beverages from any person within the state who is not duly licensed to sell such alcoholic beverage as the case may be, at the time of such agreement and sale nor give any order for any alcoholic beverage to any individual who is not the holder of a solicitor's permit, except

as provided for in section eighty-five [~~or~~], ninety-nine-g, or seventy-nine-e, or subdivision ten of section sixty-three of this chapter.

3-b. No retail licensee shall purchase, agree to purchase or receive any alcoholic beverage except from a person duly licensed within the state by the liquor authority to sell such alcoholic beverage at the time of such agreement and sale to such retail licensee, except as provided for in section eighty-five [~~or~~], ninety-nine-g, or seventy-nine-e, or subdivision ten of section sixty-three of this chapter.

§ 11. Subdivision 2 of section 79 of the alcoholic beverage control law is amended to read as follows:

2. [~~Not more than one license shall be~~] Nothing in this section shall be construed to prohibit multiple licenses from being granted to any person under this section.

§ 12. Subdivision 2 of section 105 of the alcoholic beverage control law is REPEALED.

§ 13. Subdivision 7 of section 105 of the alcoholic beverage control law is REPEALED.

§ 14. The alcoholic beverage control law is amended by adding a new section 79-e to read as follows:

§ 79-e. Grocery or drug store wine license. 1. Any person may apply to the authority for a license to sell from the licensed premises wine in sealed containers for consumption off such premises.

2. No such license shall be issued, however, to any person for any premises other than a grocery store, as defined in subdivision thirteen of section three of this chapter, or a drug store, as defined in subdivision twelve of section three of this chapter.

3. (a) Notwithstanding any other provision of this chapter, except for good cause shown, the authority shall issue a grocery or drug store wine license to the holder of a license to sell beer at retail for consumption off the premises pursuant to section fifty-four of this chapter, or beer and wine products at retail for consumption off the premises pursuant to section fifty-four-a of this chapter, at the request of such licensee, or to the holder of a wholesaler's license issued or renewed prior to July first, nineteen hundred sixty, and thereafter renewed or transferred, which authorizes the holder thereof to sell beer at retail to a person for consumption in his or her home.

(b) For the purposes of this subdivision, the premises of the grocery or drug store wine licensee shall be the same as the premises licensed under section fifty-four or fifty-four-a of this chapter.

(c) Notwithstanding any other provisions of this chapter, any license issued pursuant to this section shall run concurrently with the underlying license under section fifty-four or fifty-four-a of this chapter, and shall be deemed expired at such time as the underlying license expires.

(d) Wine tasting. Any person licensed to sell wine pursuant to this article shall be permitted to conduct wine tastings. Wine tastings which are conducted under the auspices of an official agent of a farm winery, winery, wholesaler, or importer and where such agent is physically present at all times during the conduct of the tasting, then, in that event, any liability stemming from a right of action resulting from a wine tasting as authorized pursuant to this section, and in accordance with the provisions of sections 11-100 and 11-101 of the general obligations law, shall accrue to the farm winery, winery, wholesaler, or importer.

4. Notwithstanding any other provision of this chapter, the authority may issue a license under this section to the holder of a license to sell wine at retail for consumption off the premises pursuant to section

seventy-nine of this article, provided that: (a) the licensee meets the requirements of subdivision two of this section; and (b) upon issuance of a license, the licensee under this section surrenders the license certificate issued pursuant to such section seventy-nine.

5. Such application shall be in such form and shall contain such information as shall be required by the rules of the authority and shall be accompanied by a check or draft in the amount required by this article for such license.

6. Notwithstanding any other provisions of this chapter, any person receiving a license pursuant to this section shall not be subject to the provisions of subdivision two, three or four of section seventy-nine of this article.

7. Notwithstanding any other provisions of this chapter, any person receiving a license pursuant to this section shall not be subject to the provisions of paragraph (a) of subdivision three of section one hundred five of this chapter.

8. (a) A one-time franchise fee shall be paid for by each retail outlet to the state liquor authority. This franchise fee is hereby imposed at a rate of 0.46 of one percent of the total gross sales at the individual licensed premises of the licensee in the previous year.

(b) In the event an applicant has been in business for less than twelve months prior to the filing of the application for this license, such applicant shall, in accordance with the rules of the authority, remit an estimate of its franchise fee based on square footage at a licensee's location pursuant to the following schedule:

Square Footage at Licensee's Location	Franchise Fee Per Location
0-999	$825
1,000-1,999	$1,650
2,000-3,999	$3,300
4,000-9,999	$8,250
10,000-19,999	$16,500
20,000-24,999	$33,000
25,000-29,999	$82,500
30,000-39,999	$132,000
40,000 and greater	$495,000

Within sixty days after such licensee shall have been in business for twelve months, such licensee shall submit to the authority, in accordance with the rules of the authority, a statement showing its actual total gross sales for the first twelve months of operation and the franchise fee due pursuant to paragraph (a) of this subdivision. In the event the franchise fee determined pursuant to such paragraph exceeds the amount paid pursuant to this paragraph, the licensee shall remit payment for the balance of the required franchise fee within such sixty-day period. Failure to remit payment within such sixty-day period shall be grounds for cancellation or revocation of such license. In the event that the franchise fee due pursuant to paragraph (a) of this subdivision is less than the amount paid pursuant to this paragraph, the licensee shall be entitled to a refund equal to the difference between the franchise fee paid pursuant to this paragraph and the amount due pursuant to paragraph (a) of this subdivision.

(c) No license shall be issued pursuant to this section until the franchise fee or estimated franchise fee under this subdivision required by either paragraph (a) or (b) of this subdivision has been paid in full.

(d) The franchise fee shall be deposited and disposed of in the same manner as any license fee as provided in section one hundred twenty-five of this chapter.

9. (a) Any person licensed to sell wine pursuant to this article that operates the premises of the grocery or drug store wine licensee that occupies less than one thousand square feet may purchase, agree to purchase or receive any alcoholic beverage from a person licensed under section sixty-three of this chapter to sell liquor at retail for consumption off the premises.

(b) Any person licensed to sell wine at retail for consumption off the premises under section seventy-nine of this article is authorized to sell wine to persons licensed to sell wine under this article and this section who operate the premises of the grocery or drug store wine licensee that occupies less than one thousand square feet.

10. The state liquor authority may make such rules as it deems necessary to carry out the provisions of this section, however, such rules shall not be construed to place additional limitations upon the holders of licenses issued pursuant to section seventy-nine of this article unrelated to the sale of wine.

§ 15. Subdivision 10 of section 105 of the alcoholic beverage control law, paragraph (a) as amended by chapter 679 of the laws of 1950, is amended to read as follows:

10. [~~(a)~~] Each retail licensee of liquor and/or wine for off-premises consumption shall have conspicuously displayed within the interior of the licensed premises where sales are made and where it can be readily inspected by consumers a printed price list of the liquors and/or wines offered for sale therein; and no liquor and/or wine shall be sold except at the price set forth in such list[~~;~~

~~(b) No screen, blind, curtain, partition, article or thing shall be permitted in the windows or upon the doors of such licensed premises, which shall prevent a clear view into the interior of such licensed premises from the sidewalk, at all times; and~~

~~(c) No booth, screen, partition or other obstruction shall be permitted in the interior of said licensed premises~~].

§ 16. The alcoholic beverage control law is amended by adding a new section 97-b to read as follows:

§ 97-b. Temporary retail permit for new applicants. 1. The authority is hereby authorized to issue a temporary retail permit to an applicant of a premises that is not licensed when the applicant has filed with the authority an application for a retail license at such premises or has filed renewal of such license. Such application shall be in writing and verified and shall contain information as the authority shall require. Such application shall be accompanied by a filing fee of seventy-five dollars.

2. Upon application, the authority shall issue a temporary retail permit when the applicant has filed with the authority an application for a retail license at such premises or a renewal thereof, together with all required filing and license fees. A temporary permit issued by the authority pursuant to this section shall be for a period not to exceed ninety days. A temporary permit may be extended at the discretion of the authority, for an additional thirty days.

3. Pursuant to this section a temporary retail permit may not be issued for any premises that is in violation of the provisions of subdivision seven of section sixty-four, subdivision seven of section sixty-four-a, subdivision five of section sixty-four-b, subdivision eleven of

section sixty-four-c, subdivision eight of section sixty-four-d or subdivision three of section one hundred five of this chapter.

4. A temporary retail permit is a conditional permit and shall authorize the holder thereof to, in the case of all other retail applications, purchase and sell such alcoholic beverages as would be permitted to be purchased and sold under the privileges of the license applied for; to sell alcoholic beverages to consumers only and not for resale; and to purchase alcoholic beverages only by payment in currency or check for such alcoholic beverages on or before they are delivered to such premises.

5. Notwithstanding any other provision of law, a temporary permit may be summarily cancelled or suspended at any time if the authority determines that good cause for such cancellation or suspension exists. The authority shall promptly notify the holder of a temporary permit in writing of such cancellation or suspension and shall set forth the reasons for such action.

6. Approval of, or extension of, a temporary retail license shall not be deemed as an approval of the retail application.

7. Notwithstanding any inconsistent provision of law to the contrary, the authority may promulgate such rules and regulations as may be necessary to carry out the provisions of this section.

§ 17. Paragraph (b) of subdivision 3 of section 101-b of the alcoholic beverage control law, as amended by section 1 of part E of chapter 56 of the laws of 2006, is amended to read as follows:

(b) No brand of liquor or wine shall be sold to or purchased by a retailer unless a schedule, as provided by this section, is transmitted to and received by the liquor authority, and is then in effect. Such schedule shall be transmitted to the authority in such form, manner, medium and format as the authority may direct; shall be deemed duly verified by the person submitting such schedule upon its transmission to the authority; and shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on the label, the number of bottles contained in each case, the bottle and case price to retailers, the net bottle and case price paid by the seller, which prices, in each instance, shall be individual for each item and not in "combination" with any other item, the discounts for quantity, if any, and the discounts for time of payment, if any. For purposes of this paragraph, in regards to premises licensed under section sixty-three of this chapter, "combination" shall not include wines provided by the same vineyard or distributor to a retailer and where such wines may be different. Such brand of liquor or wine shall not be sold to retailers except at the price and discounts then in effect unless prior written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. Such schedule shall be transmitted by each manufacturer selling such brand to retailers and by each wholesaler selling such brand to retailers.

§ 18. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that the amendments to subdivision 4 of section 63 of the alcoholic beverage control law made by section two of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 18 of chapter 297 of the laws of 2016, as amended, when upon such date, the provisions of section three of this act shall take effect.